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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

JIMMIE G. BILES, JR., M.D.,

Plaintiff,

v.

JOHN HENRY SCHNEIDER, JR.; and
MEDPORT, LLC,

Defendants.

Civ. No. 19-CV-48-F

**STIPULATED MOTION TO DISMISS WITHOUT PREJUDICE PLAINTIFF'S CLAIM
FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

The parties, Plaintiff Jimmie G. Biles, Jr., M.D., Defendant John Henry Schneider, Jr., and Defendant MedPort, LLC, by and through their respective counsel, R. Daniel Fleck, M. Kristeen Hand, and Sarah A. Kellogg of THE SPENCE LAW FIRM, LLC, and Gregory Costanza and Adam Owens of GRANITE PEAK LAW, PLLC, hereby file their stipulated motion to Dismiss Without Prejudice Plaintiff's Claim for Intentional Infliction of Emotional Distress, and state as follows:

[¶ 1] This case arises from the alleged breach of a Settlement Agreement resolving the claims brought by Plaintiff Jimmie G. Biles, M.D. against Defendant John Henry Schneider, Jr. and others in the lawsuits *Biles v. Schneider*, No. 2:11-cv-00366-NDF (D. Wyo. dismissed June 18, 2012) and *Biles v. Fallon*, No. 2:11-cv-00294-NDF (D. Wyo. dismissed June 18, 2012).

[¶ 2] The Court has entered partial summary judgment in Plaintiff's favor on his claims for breach of contract:

1. Awarding liquidated damages under the settlement agreement;
2. Enjoining the Defendants from further violating the confidentiality agreement;
and
3. Enjoining the Defendants from further violating the non-disparagement clause.

[¶ 3] Moreover, Defendants have noticed an appeal with the Tenth Circuit Court of Appeals. In order to conserve judicial resources, and streamline the appeal, the parties have agreed that Plaintiff may voluntarily dismiss his remaining claim for intentional infliction of emotional distress (second cause of action) without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and/or 15(a).

[¶ 4] In the event that the Court of Appeals strikes down the liquidated damages award and/or remands the case for trial on the contract damages, the parties agree that Plaintiff may seek leave to re-assert the intentional infliction of emotional distress claim in the same procedural posture that the claim exists today. Defendants agree not to oppose any such request but preserve any defenses to the claim that exist on this date.

I. CONCLUSION

For all of these reasons, the parties respectfully requests that the Court grant this stipulated motion and dismiss Plaintiff's intentional infliction of emotional distress claim without prejudice.

Dated this 25th day of September, 2020.

/s/ Sarah A. Kellogg

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of September, 2020 I electronically filed the foregoing Stipulated Motion to Dismiss Without Prejudice Plaintiff's Claim for Intentional Infliction of Emotional Distress with the Clerk of the Court using the CM/ECF system which will send notifications of such filing to the following addresses:

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